states that a CAP facility operating on a particular block has no relevance to a customer one block away. GTE has recognized (and will discuss *infra*) that access markets are limited geographically. However, it is clearly in a CAP's interest to extend service on request to customers who are located near the CAP's existing facility. The economics of facility placement are such that an "addressable" corridor extends up to about a kilometer on either side of a CAP facility.[10] This fact, combined with the considerable extent of existing fiber networks, means that a large proportion of the high-usage customers who represent the CAPs' target market already have CAP alternatives available in many metro areas.[11]

The issue in this proceeding is not whether any particular market is competitive. Therefore, it is clear that the Commission is well-justified in viewing its *SFNPRM* proposals within a context of rapidly developing access competition. Further, it is not at all "premature" to establish a framework which would establish criteria and procedures for streamlined regulation and nondominant treatment. GTE submits that several markets within its serving areas would meet any reasonable criteria for streamlining today.

III. THE PROPOSED CHANGES TO BASELINE PRICE CAP REGULATION WILL PROVIDE IMMEDIATE PUBLIC BENEFITS REGARDLESS OF THE LEVEL OR TYPE OF COMPETITION PRESENT IN A GIVEN MARKET.

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10 GTE's Comments (at 67-68) in response to the *SFNPRM* discusses the extent to which an addressability measure, when used to gauge the elasticity of supply, would include potential capacity.

11 CAP networks are no longer limited to a small areas in downtown business districts. For example, CAP fiber now extends through most of the Los Angeles basin, and across the Dallas-Fort Worth metroplex.

Changes to baseline regulation as proposed by the Commission represent reasonable improvements over the current system. In Comments filed in this proceeding, GTE generally supported the Commission's efforts to: reduce the barriers for the introduction of new services; implement zone pricing for all switched access elements; revise the existing basket structure; and allow the introduction of APPs for switched access. GTE has also proposed a number of improvements to certain specific aspects of the Commission's proposals.

A. Baseline changes will provide economic and public benefits regardless of the level of competition present.

The changes to baseline price cap regulation proposed in the *SFNPRM*, including the modifications GTE has proposed, should be adopted, without any requirement for a competitive showing, because they will advance the Commission's goals in this proceeding, without creating any possibility of competitive "harm."

First, the streamlined tariff and waiver filing proposals will encourage the development and introduction of new and better services. As the Commission has recognized (*SFNPRM* at ¶69), its existing tariff filing rules, coupled with the requirement to file waivers of the Part 69 rules to introduce new switched access rate elements, constitute unreasonable restrictions and place undue delays on a LEC's ability to introduce new offerings. Customers will benefit from a LEC's increased ability to bring innovative new services to market in a timely fashion as technology develops and economics permit. These benefits would result even if the market in question is not yet sufficiently competitive to provide market discipline for the LEC.[12] Of course, to the extent that competition is developing in the market, new services will also constitute an important part of the LEC's response to that competition.

Second, implementation of flexible pricing measures in baseline regulation will result in the development of more efficient access pricing by allowing LECs to establish access prices which more closely reflect underlying costs. Under current rules, LECs are limited in their ability to implement innovative pricing plans such as zone pricing and volume and term discount offerings for switched access services and to target meaningful rate reductions in particular markets. By removing features of the price cap plan which discourage rate reductions, the Commission can promote lower prices which would directly and immediately benefit consumers. By allowing the adoption of more efficient price structures, the proposed baseline changes would allow more accurate price signals to be provided to not only access competitors, but access customers. This would encourage efficient levels of access services consumption, efficient utilization of access facilities, and efficient choices among different access services.[13]

Third, accurate price signals are required if the market is to guide efficient investment in the infrastructure by incumbents and entrants. If LECs are inhibited from

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12 In fact, even if a market is not competitive, and has no prospect of ever becoming so, the timely introduction of new services would still be an important policy concern.

13 As with new services, more efficient price structures will improve consumers' welfare even in the absence of any competition. Of course, since competition is actually developing in these markets, the ability to adjust prices -- within price cap constraints -- will minimize pricing umbrellas and promote effective rivalry among providers, which would allow consumers to benefit from competitive entry.

making rate adjustments, and prevented from adopting efficient rate structures, inaccurate price signals would be sent to potential entrants. This results in the creation of a "price umbrella" under which higher cost firms could enter and survive in the market, raising industry costs and reducing technical efficiency.[14] Sprint agrees (at 5) that competitors may currently receive incorrect signals about the long-term economic feasibility of entering access markets. Incorrect pricing signals may also distort investment decisions by the incumbent LEC. If, for example, a LEC is considering investment in a new network capability, policies which create uncertainty regarding the LEC's ability to offer new services using that capability, or its ability to set prices for such services at competitive levels, would make the investment less attractive. If efficient prices are to influence entry and investment decisions, they should be in place before those decisions are made. Therefore, policies to encourage efficient pricing should be initiated *before* there is any evidence that competition is affecting pricing decisions.[15] If the establishment of some degree of "adequate" competition is a prerequisite before allowing access prices to be set at economically efficient levels, then the Commission can never be fully assured that entry is indeed efficient.[16]

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14 *See* Comments of USTA, "Pricing Flexibility for Interstate Carrier Access Services", Richard Schmalensee and William Taylor, ("Schmalensee and Taylor") at 8.

15 Schamalensee and Taylor at 3.

16 *See, e.g.,* Statement of Dr. Mark Schankerman, "Competition through Regulatory Symmetry", submitted as an attachment to GTE's Comments in response to the Notice of Proposed Rulemaking in this docket, May 9, 1994 ("Schankerman"): "As long as such umbrellas exist, the fact that new entry successfully erodes the market share of incumbents does not mean that the level and composition of the new investment is socially efficient. *Ex post* success is an indication of relative efficiency only if price signals are meaningful and restrictions are symmetric."

Finally, in order to maximize benefits to consumers as the marketplace becomes more competitive, the rules under which competitors must operate should become more homogeneous (*See* TRA at 4.) Regardless of how many customers they serve, CAPs are unconstrained in their ability to introduce new services, offer volume and term discounts and entice customers with promotional offerings. If the Commission allows LECs to respond to customer demands in a similar fashion -- subject to effective price cap constraints where effective competition has not yet been demonstrated -- customers will be the ultimate beneficiaries of vigorous price and service quality competition.[17]

Some commenters argue that the benefits the Commission expects from its proposed baseline changes will not be realized. For example, The Association for Local Telecommunications Services ("ALTS") suggests (at 8) that, in the absence of competitive pressure, LECs will not use any new pricing flexibility to make rate changes which will benefit consumers. This argument ignores two important points.

Regardless of the existence or non-existence of competition, the introduction of more efficient rate structures incorporating zone pricing and nonlinear tariffs (with respect to volume) would provide customer benefits. In order to control LEC market power, it should not be necessary to force LECs to use inefficient price structures. n addition, the fact that competitive criteria for streamlining may not yet

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17 Schankerman (at 4) argues that asymmetric regulation should be minimized, even where asymmetric market power is present. Such regulation should be adopted only when there is a demonstrated capacity of the incumbent to deter efficient entry, and then only when the regulation is "the least costly way to resolve the potential problem."

have been satisfied in a given market does not necessarily mean that no competition exists there. In fact, as discussed *supra*, competitive entry has already occurred in hundreds of cities across the country. Even if, in a given market, the extent of competition is not yet sufficient to completely eliminate a LEC's market power, the LEC should be allowed to respond to competition -- as long as price caps continue to protect against any abuse of whatever market power the LEC retains. Failure to allow a LEC to respond would preserve a price umbrella for the entrant, and discourage the competitive rivalry which would benefit consumers.

GTE's pricing behavior under price caps belies ALTS' argument. GTE has made a series of voluntary rate reductions, including below-band filings for both switched and special access. These reductions have included Carrier Common Line ("CCL") rates as well as those for switched and special transport. At times, GTE's rates have been set half a billion dollars below cap, on an annual basis. GTE agrees with ALTS that LECs do not make rate reductions out of altruism. GTE's behavior can only be explained as a response to genuine competitive pressure, even though no formal showing has been made that these markets meet any competitive criteria. ALTS' assumption that a LEC would never voluntarily reduce rates in a baseline market is simply incorrect.

A LEC's decision to adjust its rates, however, will be affected by the constraints imposed by the price cap rules. Like any firm, the LEC will weigh the benefits of a reduction, in terms of demand response, against the cost in terms of revenue. Any unnecessary regulation that increases the cost of the rate reduction will tend to deter the LEC from making a that reduction.[18] The Commission is correct in suggesting that its baseline reforms, which are intended to minimize artificial disincentives to reduce rates, will in fact benefit consumers.

ALTS also takes the astonishing position (at 10) that the Commission should not be concerned with sending efficient entry signals. Inefficient entry, and the circumstances which lead to it, harm consumers. First, inefficient investment involves a waste of scarce resources. Consumers are harmed when society's resources are not put to productive use.[19] Second, once firms have entered a market, they form a constituency interested in the maintenance of the inefficient prices which induced their entry. The Commission's recent experience in establishing switched transport rates, in the wake of the equal charge rule, is a perfect example of this phenomenon. Third, as noted *supra*, bad price signals can deter the incumbent from making otherwise productive investments. This could raise industry costs and deprive consumers of new technology. Finally, as Schankerman points out (at 4), consumers may make complementary, sunk investments in order to adopt the entrant's services. To the

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18 For example, if the LEC is required to average its rate across a study area, the cost to the LEC of responding to competition within a particular relevant market will be increased.

19 Inefficient entry causes a loss of technical efficiency and raises average industry costs. As Schankerman notes (at 3): "Technical efficiency in this broader sense must be a central regulatory objective. Otherwise, very substantial social resources will be wasted in the design, construction, and continued development of the information infrastructure."

extent that these are idiosyncratic, they represent additional technical efficiency losses associated with the inefficient entry.[20]

B. Baseline changes proposed by GTE will continue to provide adequate safeguards.

Those parties who oppose granting additional pricing flexibility to LECs primarily cite the following concerns: (1) that LECs will be afforded greater opportunities to "price squeeze" or raise prices of monopoly services while lowering the price for competitive services; (2) that consolidation of certain price cap categories will enable LECs to engage in cross-subsidization; (3) that LECs will lower rates to predatory levels; and (4) that LEC new service offerings and discount plans will discriminate among users. Several commenters also argue that because existing LEC access rates are set at levels that exceed "economic costs," no additional pricing flexibility should be granted until "subsidy rates," such as the CCL and RIC charges, are reduced or eliminated. As discussed below, revisions to baseline price cap regulation, as proposed by GTE, would continue to provide adequate safeguards against any anticompetitive behavior. Further, there is a critical need for immediate relief and the Commission should not wait until it resolves all rate subsidy issues in a comprehensive access reform proceeding before granting LECs the flexibility to establish more efficient rates, introduce new services, and respond to emerging competition.

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20 Examples might include specialized CPE, installation costs or training of the customer's employees. Further, "Uneconomic entry can also induce subsequent 'localized technical change' directed at improving the technology used by the entrant. If the original choice of technology was distorted by asymmetric regulation, these resources are misdirected and represent additional social waste" (Schankerman at n. 3).

The price cap plan already prevents the LECs from offsetting losses for competitive services with higher prices for less-competitive services. This is accomplished, in part, by the structure of the price cap baskets and service categories themselves. As the Commission has noted in the *Second Notice* (at ¶19), it is the pricing bands associated with the price cap categories which prevent LECs from offsetting price increases in one service with decreases in an unrelated service. Although GTE has proposed to combine several categories and subcategories in the existing plan where similarities in service characteristics exist (*i.e.*, 800 and LIDB data base services) and to combine services in which high cross-elasticities of demand are now present (*i.e.*, DS1 and DS3 services), the underlying pricing band safeguards remain and would effectively eliminate the ability to cross-subsidize one service with another.[21]

Further, even under the more flexible rules proposed in the *Second Notice*, LECs are precluded from charging high anti-competitive prices for services required by IXCs and CAPs. In fact, Expanded Interconnection Service ("EIS"), the set of services absolutely essential to a CAP's ability to interconnect to a LEC network, is completely outside of price cap regulation and can in no way be affected by pricing behavior associated with price cap services. Other LEC services that would be purchased by an interconnector are sold at the same tariffed rates that other access customers pay.[22]

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21 *See* Schamalensee and Taylor at 2.

22 Bernheim suggests that a LEC could leverage its control of "bottleneck" facilities to capture rents in downstream markets. Comments of AT&T, Appendix A, "An Analysis of the FCC's Proposal for Streamlined Regulation of LEC Access Services", B. Douglas Bernheim. ("Bernheim") As a supposed example of this, Bernheim posits that the LEC could raise the price of "loops" to its access

Finally, aggrieved parties could file a complaint under Section 208 of the Act to the extent they believe any rates filed by LECs are unreasonable or discriminatory.

LECs also have little opportunity, or incentive, to engage in broad-scale predatory pricing as many commenters claim. The new service tariff filing rules would continue to maintain the requirement that *all* new services be priced at a level that exceeds direct cost. Under GTE's proposal for pricing flexibility, LECs would also be required to show that APPs were priced above direct cost. Moreover, LECs have no real incentive to engage in predatory pricing, since they would not be able to recoup losses through other rates. As GSA observes (at 7), concern over predatory prices for certain services and corresponding high prices for others is overstated.[23]

As GTE stated (at 29):

> The potential harm from rates that are too low is a second-order effect which could only affect consumers if the LEC were able to carry out a strategy of predation successfully. The chances for such a strategy to succeed in interstate access markets are slim, given the difficulty of recoupment, the rapid growth of entry in these markets, the existence of significant sunk investments in competitors' networks, and the LECs' inability to prevent reentry.

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customers, while reducing the price of "switching." But there is no basis for this example in the reality of interstate access pricing. If the "loops" are special access channel terminations, then they would be sold at the same tariffed rates and terms to any customer. For switched, or common line "loops", the LECs do not charge access customers directly today. The only "per-loop" charge is the EUCL, which is paid by the end-user. The other charge related to switched "loops" is the CCLC, which is applied to essentially the same minutes as the local switching rate. There is therefore no opportunity for the LEC to gain by discriminating between "loops" and "switching." In any event, the rate elements involved are in different price cap baskets.

23 GSA notes (at 7) that as competition grows, below-cost pricing will only result in an unfavorable outcome -- achievement of a dominant share of a specific market but only at a continued loss.

Therefore, it is highly unlikely, if not impossible, that LECs could successfully price low enough, and sustain these prices for the period of time that it would take to drive their competitors from the market, especially considering the number and size of their competitors.

The anti-discrimination provisions of Section 202 of the Act and the Commission's statutory responsibility to ensure just and reasonable rates would not simply disappear with the adoption of baseline pricing flexibility measures. Tariff filings proposing new services, as well as discount pricing plans, would be subject to both cost support and filing notice requirements. The Notice of Intent ("NOI") to file process proposed by GTE would provide an opportunity for the Commission and interested parties to review any LEC new service proposal, prior to the tariff filing, to identify any possible discrimination. The Commission would continue to exercise its authority to defer, suspend or reject any proposal that discriminates in favor of any one carrier or customer.[24]

Finally, many commenters cite the overall levels of existing access charges and the need to eliminate the subsidies inherent in certain access elements prior to adopting any changes to baseline price cap regulations. For example, MCI (at 1) argues that no additional flexibility should be granted until all price levels are driven to "economic costs." Similarly, citing the uneconomic pricing of CCL and RIC elements,

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24 Many of the concerns regarding potential discriminatory behavior are levied against a LEC's potential entry into the interLATA long distance markets via an affiliated carrier. However, LECs would continue to be subject to the Commission's rules regarding affiliate transactions, accounting procedures and the requirement to provide services, on a non-discriminatory basis, to an affiliate under tariff.

CompTel (at 5-9) complains that these rates are excessive and that any additional flexibility would only "exacerbate the effects of above-cost access charges on competition and consumers." Sprint (at 5) also agrees that LECs charge interstate rates higher than economic costs, however, Sprint recognizes that the current system causes IXCs to respond to artificial incentives and engage in service and facilities bypass. Accordingly, Sprint calls for a phase-out of the CCL and RIC elements, as do many other commenters.

C. Changes to baseline price cap regulation can and should be considered separately from comprehensive access reform.

GTE has repeatedly urged the Commission to initiate a comprehensive proceeding to reform its current access charge rules. The Commission could take action in such a proceeding to allow a larger proportion of common line costs to be recovered through end-user charges; this would reduce the amount of implicit universal service support generated by interstate switched access charges. GTE and many other parties have also proposed a proceeding to establish a new national universal service policy. Any new funding derived from a new universal service support mechanism would be used to reduce rates which provide implicit support today, including interstate access.[25]

In its proposals for access reform, GTE has also recommended changes in the access charge rules to ease the introduction of new services, to permit the offering of

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25 Sprint's proposal to apply a portion of the price cap productivity offset to reductions in the RIC element deserves serious attention. GTE believes this proposal could be used as a "starting point" for the Commission's expected access reform proceeding.

efficient optional discount plans, to simplify the price cap structure, and to establish an adaptive framework based on competitive criteria. The Commission has chosen to address these issues in the current *SFNPRM*, while deferring consideration of broader access structure issues to a subsequent access reform proceeding. The *SFNPRM* proposals, with the modifications GTE has suggested, have substantial merit, can be considered separately from the rest of the access reform issues, and should be adopted now.

The suggestion by commenters that the level of access charges precludes the adoption of the baseline changes is simply incorrect. When a group of services must recover a high level of contribution above its economic cost, the efficiency of the price structure becomes more, rather than less important. Nonlinear rates, such as volume discounted APPs for example, allow for the recovery of a necessary level of contribution, while permitting rates at the margin to be brought closer to economic cost. Such rates would therefore minimize the economic distortion associated with the need to generate a given amount of implicit universal service support. The presence of implicit support in today's rates is therefore not a reason to delay the adoption of more efficient pricing approaches.

The statement by ALTS (at 9) that no rate reductions can be considered to be beneficial in today's environment makes absolutely no sense, from either an economic perspective or a public interest standpoint. As a major purchaser of telecommunications services, GSA (at 5) recognizes that "this increased flexibility has a dual advantage. It allows carriers to set prices closer to the corresponding levels of cost, and it provides ratepayers with greater options in the manner in which they buy services."

The Commission has recognized these basic assumptions in granting AT&T relief for new services. The Commission adopted reforms for AT&T, even before adopting a price cap plan for AT&T. The Commission did this in markets where it assumed that AT&T still retained market power; and before any AT&T market had been found competitive through the application of criteria like those proposed in this *Second Notice*. The Commission took these steps because optional calling plans and customer-specific tariffs provided direct benefits to consumers.

Objections to adopting baseline pricing flexibility proposals until the Commission completes a comprehensive access reform proceeding constitute nothing more than a delay tactic.[26] The Commission has already recognized that a certain level of reform is needed now. Rapid technology changes and market dynamics are creating competition today. GTE believes Commission regulations should be adapted so as to foster development of new and better services, ensure lower prices and reduce regulatory burdens. Tariff and pricing flexibility changes as proposed by GTE will improve the efficiency of baseline regulation, regardless of the presence or extent of competition. As GTE has previously stated, price caps are intended to replicate the outcome of a competitive market, even where the market is not yet competitive. The proposed

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26 In the same vein, AT&T (at 2) and other parties (Time Warner at 6, n.5) have suggested that the proposals set forth in the *SFNPRM* somehow represent a reversal of the Commission's findings in the First Report and Order. This argument is specious since the Commission clearly intended its actions in the First Report and Order to be interim in nature. As the *SFNPRM* explains (at ¶17), "In the First Report and Order, although we acknowledged the emergence of competition in a number of segments of the LECs' markets, we generally found that the record before us was insufficient on these issues, and we decided to defer them until this Second Further Notice."

changes would allow baseline regulation to better achieve this goal. Delay in reforming the baseline LEC price cap regulation will only exacerbate inefficiencies that are inherent in existing access prices and service offerings today. GTE urges the Commission to move forward with its "pro-competitive agenda" and adopt change in baseline price cap regulation without regard to the actual level of competition present.

D. No competitive "checklist" should be adopted as a precondition for changes in baseline regulation.

A number of parties seek to tie the adoption of any potential reforms in the Commission's interstate access and tariff filing rules to "checklists" related to the removal of supposed barriers to entry into local service markets. These commenters, who are mainly competitors of the LECs, wish to delay the advent of full and equitable competition in access markets, and attempt to use this proceeding to further their objectives in other markets. The Commission should not condition its proposed changes to baseline price cap regulation on any competitive "checklist."

First, the Commission should adopt the proposed baseline changes because they are good for consumers, even in markets which have not yet been shown to be competitive. Therefore, no measure of competition – however imperfect – should be set as a precondition for these changes.

Second, the checklist items proposed by various parties are long and quite diverse. Commenters advancing these lists do not explain the relationship between the regulation of local competition at the state level, and LEC market power in the provision of interstate access services.

Third, many of the "checklist" parties effectively abandon any attempt to identify the relevance of their lists to reform of baseline regulation. Instead, they focus on "a potential 'carrot and stick' approach which would link LEC regulatory freedom to LEC success in removing entry barriers...." (ALTS at 12.) In effect, the Commission is being asked to use its own regulation of interstate access as a lever to advance the agendas of certain parties in matters currently at issue before state regulatory agencies. This is not an appropriate use of the Commission's interstate access regulation. If the proposed baseline changes will produce benefits for consumers of interstate access, the Commission should adopt them, and should not hold customers hostage to decisions in state jurisdictions concerning local services.

The issues surrounding local competition are currently being debated before regulators in many states. As these proceedings are resolved, GTE is confident that local competition will continue to grow.[27] However, the issues are complex, and the specific facts vary from state to state. Each of the parties in these proceedings has taken positions based on its own self-interest, and these in turn are reflected in the different proposed "checklists." The Commission should not take sides in this debate, or assume that using its access regulation as a "stick" will improve the outcome.

Instead, the Commission should determine whether any of the "checklist" items has relevance as part of the criteria the Commission establishes for the administration of streamlining. GTE will discuss this issue *infra* in connection with streamlined regulation.

IV. SPECIFIC CHANGES TO BASELINE PRICE CAP REGULATION WILL WORK TO ACHIEVE THE COMMISSION'S STATED GOALS.

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27 In fact, GTE has recently filed for certification in California to act as an alternative local service provider outside its own existing serving areas.

LECs should be allowed greater flexibility to file tariffs for new services, to implement zone pricing for all access elements, to be permitted to lower access rates and to implement cost-based APPs to respond to similar competitive price offerings, *without* regard to the level of competition. Generally, commenters such as GSA and Sprint agree with these proposals. Additionally, GTE believes the price cap baskets should be restructured and LECs should be allowed to respond to large customer demands by filing ICB or RFP-type tariffs.

As stated *supra*, competitors such as AT&T, MCI, Time-Warner, MFS, Teleport and NCTA advocate the retention of existing restrictions on LEC access service development and pricing. However, to the extent that the Commission adopts certain baseline reforms, many of these commenters propose additional burdens which, in some respects, are more onerous that the existing price cap rules. GTE will address each of these concerns in response to commenters objections of the following specific proposals set forth in the *SFNPRM*.

A. Part 69 Waivers

Recognizing that its Part 69 rules represent an impediment to the introduction of new services and rate structures, the Commission has proposed to simplify the process by which it approves LEC waivers of the Part 69 rules to establish new switched access rate elements. An alternative to the existing waiver process is essential to allow LECs to proceed with the filing of a new services tariff with minimal delay and uncertainty. The proposal set forth in the *SFNPRM* is an improvement in that it replaces the criteria established generally for waivers with a more relevant public interest standard. However, it still would require the LEC to file a petition, does not specify a time period for the Commission to respond, and leaves the burden of proof that the service is in the public interest to the LEC.

GTE has proposed that Part 69 should be modified to replace the current waiver process for new services. The LEC would instead file a Notice of Intent ("NOI") to file, which would sufficiently describe the new service and proposed rate elements and applications. The proposed service would be presumed to be in the public interest, and the Commission would have a limited time to act in response to the NOI.[28] The resulting process would finally make the Commission's procedure for review of new services consistent with the provisions of the Communications Act, which establishes a presumption in favor of new services, and places the burden on any party opposing a new service to show why it is not in the public interest.[29]

Several commenters, such as LDDS (at 32) and NCTA (at 27), oppose the Commission's efforts to relax the over-rigid waiver process, and instead argue that Commission must first reform access rules. Again, this is a delaying tactic. These commenters are well aware that an access reform proceeding could take months or years to complete. GTE agrees the Commission should proceed with such needed reform. GTE has consistently recommended reform of the Part 69 structure itself as the best way to improve the introduction of new services. However, GTE urges the Commission to adopt the proposed relief now. A more streamlined approach reasonably balances the need for LECs to introduce new services on a timely basis

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28 GTE also strongly supports the *SFNPRM* proposal to permit other LECs to file similar services on a "me-too" basis.

29 47 U.S.C. §157.

while ensuring that new service rate structures and applications are nondiscriminatory and reasonable.

AT&T (at 32-34) is opposed to revising the waiver process, stating that rules that discourage unreasonable discrimination and competitive impacts should be given precedence over any benefits from LECs departing from the Part 69 structure. Nothing in the procedure GTE has proposed would lead the Commission to allow the adoption of unreasonably discriminatory rates. Contrary to AT&T's contentions (at 34), proposals to simplify the Part 69 waiver process would not "run afoul of Court of Appeals admonition that FCC may not tolerate evisceration of the rule by waivers." The proposal in the *SFNPRM*, and GTE's modified proposal, would both amend Part 69, through this rulemaking, to incorporate the new procedure. The rules of procedure governing waiver requests, to which AT&T refers, would not then apply. In fact, streamlining the waiver procedure would create a process which was consistent with the Act, which the current waiver process is not. Further, neither the Commission nor GTE is advocating the elimination of public notification requirements and the opportunity to oppose new service proposals. The Commission can continue to use its discretion to find that a new service described in an NOI is not in the public interest, or to defer or reject any tariff filing. The Commission would also have the opportunity to open a proceeding to deal with any serious public interest concerns raised by a new service proposal. The NOI process proposed by GTE represents a means to simplify the existing process until the Commission completes a comprehensive reform of its Part 69 Rules, but in no way constitutes abandonment of the Commission's statutory responsibilities.

The Commission should readily dismiss those commenters' proposals which would further entangle both the LECs and Commission in an overly-intrusive regulatory process. Rather than proposing constructive alternatives to the existing waiver procedure, MCI (at 12) and Ad Hoc (at 17) propose even more stringent criteria and prescribed standard waiver formats, which would complicate the process rather than improve it. In addition, MCI offers no suggestion as to the time period in which the Commission should take to respond to a new service filing. Regulatory delays in acting on waivers is the primary reason the Commission has proposed to modify the process.[30] MCI claims that this delay is usually the result of LECs submitting too little information regarding their waiver request. This is simply not true. Waivers that GTE has filed have provided substantial documentation regarding service technologies and provision, operating practices and cost characteristics.[31]

In contrast, however, other commenters recognize the need for modifying the Part 69 waiver procedure, specifically to encourage the growth of new services.[32] Even Time Warner (at 18) observes that delays in granting waivers cause unfair uncertainty in the existing access marketplace and suggests that the Commission act on all waiver

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30 As stated in GTE's Comments (at 23, n. 29), GTE has experienced significant delays in obtaining any action on its waivers.

31 *See, e.g.*, GTE Telephone Operating Companies Petition for Waiver of Part 69 Rules to Geographically Deaverage Switched Access Services, November 27, 1995 (GTE "ZonePlus" Plan).

32 "Replacement of Part 69 waiver process with a public interest showing may be an effective means of expediting the introduction of new services." CompTel at 30-31. The Part 69 process "can and should be streamlined." Sprint at 20. Also, Ad Hoc (at 15-17) indicates that the public interest could be served by LECs making a public interest showing, subject to comment and notice periods.

petitions within a set period of time (120 days). Under the current framework, customers cannot anticipate when services could be made available and at what structure and price. Further, the expectation of delay, cost, and uncertainty in the current waiver process deters LECs from proposing services that would otherwise be worthwhile. A new procedure for handling waivers is essential to foster viable LEC participation as access markets become more competitive.

B. New Service Tariff Filings

In the *SFNPRM,* the Commission proposes to classify new services as either "Track 1" or "Track 2." Track 1 services would be subject to existing notice and cost support rules and Track 2 services would be subject to reduced requirements. This approach could represent an improvement over the current process, in that it could provide a means for affording increased scrutiny to services which have raised specific public policy concerns. However, the essential problem with the current process is that it requires each proposal to be classified, through a waiver process, prior to the tariff review.

GTE is concerned that a new approach which would require the Commission to classify every new service as either Track 1 or Track 2 would further complicate new service introductions and would lead to unnecessary disputes over how a service should be classified. Further, the process proposed in the *SFNPRM* places the burden of proof on the LEC to demonstrate that the service is in the public interest, contrary to the presumption in the Communications Act. Accordingly, GTE has proposed that any new service be presumed to be a Track 2 service, consistent with the Act, unless it has been found explicitly by the Commission through a prior proceeding to be a Track 1 offering.

Not surprisingly, several of the LECs' competitors oppose the Track 1/Track 2 proposal of the Commission, and insist instead that all services be considered as "Track 1".[33] This proposal places the interests of these competitors above those of customers to whose needs LECs must respond. Over the past several years, GTE has introduced numerous new switched and special access offerings which were developed as a direct result of customer demand.[34] Other offerings have been primarily technology driven such as the introduction of SS7 based services and SONET-based transport. Clearly, the positions of the CAPs, which oppose any relaxation of the new service tariff filing rules, are self-serving. It is to their benefit that existing regulation causes significant delay in the ability of LECs to deliver new services and capabilities that customers demand, and creates uncertainty concerning the LECs' ability to deliver the services at all. When services are delayed, LECs may be viewed as unresponsive to service requests, which could encourage customers to obtain such service functions from other providers who are not so burdened. As Schamalensee and Taylor observe (at 8), the existing process essentially places a form of asymmetric regulation on LECs, reducing their ability to market their services by varying product characteristics (including price) and determining the optimal product and price level for the market.

Some commenters opposing additional streamlining of new service introductions raise concerns that LEC new service filings submitted under Track 2 could potentially

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33 STV at 8, COMCAST at 24-25, CompTel at 26.

34 These include: Switched 56, Fractional T1, E1 Service (2.048 Mbps), Fiberconnect, DOVConnect, Business/Residence Line 800, Videoband Type II, Preferred Directory Assistance, Enhanced Access Diversity, DDS Bridging and Secondary Channel, and new 2.4, 4.8, 9.6, and 56 kbps DDS speeds.

be priced too high, while others are concerned that new service prices will be priced too low. For example, AT&T (at 23) agrees that the direct cost showing for a Track 2 service would guard against a LEC pricing a monopoly service too low, but expresses concern that a new service may be priced too high.

Similarly, MCI claims the Commission should provide explicit guidance on the level of overhead costs. For any prices which exceed direct costs, MCI (at 11) suggests that LECs should make a corresponding reduction in their PCI which, as MCI claims, is consistent with ratemaking practices followed under rate of return regulation. First, MCI has not adequately demonstrated that the current practice in which LECs apply standard uniform loadings has led to excessive rates. GTE is not aware that the Commission's objective in designing its price cap plan was to imitate rate-of-return regulation. Further, MCI's suggested adjustment to the PCI is inconsistent with the Commission's current approach to rolling new services into the PCI, which is designed to ensure that the new service does not influence the PCI or SBI calculations. Setting prices at some level above direct cost does not lead to "double-recovery of overheads" once it is incorporated in the calculation of the PCI. All rates will be designed to contribute toward recovery of the common overhead costs of the firm and, therefore, will be set at some level above direct cost. However, under the proposed Track 2 filing process, MCI could continue to challenge any proposed rates that it believes are set at an "excessive" level above direct cost. In addition, the existing PCI coupled with Service Band Index constraints, adequately protects against exorbitant increases in rates.

None of these commenters offer any evidence that new service offerings are deliberately priced in an excessive manner. As ICG (at 3) observes, "New services are usually offered within a particular market and compete against existing services within that market." As such, there is little incentive for LECs to load new service prices with excessive overhead costs.

In contrast, other parties claim that streamlined treatment of new service introductions will result in prices that are too low. For example, CCTA (at 23) claims LECs will tend to assign lower direct costs to Track 2 services. MFS (at 2-4) contends that LECs should support new services with a showing similar to that used for Expanded Interconnection Services, which are subject to standard rate of return pricing rules, and not price caps. These parties call for even more extensive cost support showings for new service tariff filings, and are over-reaching.

Under the process suggested in the *Second Notice*, all new service filings will be required to demonstrate that prices are set at levels that equal or exceed direct cost, thereby guarding against predation. In addition, requiring all new service prices to be set at levels that approximate full revenue requirement allocations, as MFS suggests, would ensure that LEC's new service introductions would never be able to adequately compete with those of competitors. While this may be exactly the result that MFS wishes the price cap rules would achieve, it clearly does not serve the public interest. Further, this proposal ignores the fact that the Commission adopted price caps, in part, because it recognized that fully-distributed cost allocation processes did not provide the Commission with useful information as to how relative rate levels should be set.

Some commenters also express concern that the 14-day notice period would not provide time for meaningful objection and review (AT&T at 24, CCTA at 24) or to determine if new service proposals are reasonable and non-discriminatory (LDDS at 31). Under a more streamlined approach, LECs will have no more ability to "exploit market power" than they do today. The Commission would continue to rely on the tariff review process to ensure just and reasonable rates; all service prices filed under a Track 2 scenario would need to demonstrate recovery of direct costs; the Commission would still have the ability to defer the effective date of any tariff, be it Track 1 or Track 2, to a total of 120 days; and the Commission could suspend and investigate tariff filings for up to five months. Under the proposal outlined in the *SFNPRM*, and the modification advanced by GTE, these abilities would not change.

Other parties generally recognize that some simplification of the tariff filing process may be warranted. For example, Time Warner (at 11) states that, if the Commission divides services into two categories, the proposal to establish "two tracks" is not without merit, as long as new service prices are set above direct cost. Sprint (at 14) recognizes the benefit of relaxed tariff filing rules for *all* new services by proposing that shorter notice periods (*i.e.*, 30 days) be adopted.

The Commission should proceed to streamline new service tariff introductions. Many new services are essentially new optional features brought about through technological innovation and market demand. These are already provided by CAPs in advance of LEC introductions, primarily because of regulatory delays in Part 69 and new service tariff process. Indeed, as MFS admits (at 3), "many of the new services introduced by LECs will be targeted for users with competitive service alternatives available to them." Simply put, customers will not be made worse off, and will gain new service options, as a result of the introduction of more flexible new service filing rules. Commenters have not demonstrated anything to the contrary.

C. Additional Pricing Flexibility